

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

265

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 24, 882, & 24, 883

UNITED STATES OF AMERICA

v.

MICHAEL H. BLOUNT

Appellant

and

UNITED STATES OF AMERICA

v.

ODELL WILLIAMS

Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT
For the District of Columbia

BRIEF FOR APPELLANTS

United States Court of Appeals
for the District of Columbia Circuit

FILED MAR 24 1971

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STATEMENT OF ISSUES

- I. Whether the trial judge erred in denying the Motion for Judgment of Acquittal for Appellant Blount?
- II. Whether the trial judge erred in denying the Motion for Judgment of Acquittal for Appellant Williams?

REFERENCES TO RULINGS - None

This case has not been reviewed previously by the United States Court of Appeals.

STATEMENT OF CASE

On the afternoon of February 28, 1970, Elma K. Douglas, while walking south on North Capitol Street, between E and F Streets, allegedly had her purse taken from her by several young men who grabbed her from behind. (T 3-4) Miss Douglas did not see any of the individuals who took her pocketbook, nor did she see where they went. (T-7) Miss Douglas was unable to identify either Appellant Blount (T-12) or Appellant Williams (T-20).

At the same time two other persons, William N. Deragon and Harry L. Carey, were in an automobile headed south on North Capitol Street. (T-112) Mr. Deragon testified that he "turned around and looked back and I could see this lady having her head thrown back and these youths were around her. I yelled to Mr. Carey to stop and he did. I opened the car door, at which time these youths broke loose from her and started to run and then I started to chase them." (T-29) Mr. Deragon said he was not sure how many individuals there were, but that he was chasing two persons (T-30), whom he later was unable to identify. (T-75) Mr. Carey said there were three persons. (T-115)

Mr. Deragon said he chased the individuals to E Street, Northwest, where they got into the back of a green car. (T-31) Mr. Deragon said he did not remember if the back door of the car was already opened (T-31) or if the motor was running (T-74). He said there were two men in the front seat (T-36) and that the one on the passenger side of the car supported the right rear door (T-36).

Mr. Deragon said he grabbed one of the individuals that was getting into the car, and was pulled in himself. (T-39) The car drove away with Mr. Deragon inside. According to testimony, the car headed in a westernly direction on E Street, Northwest (T-115), and made a right hand turn onto Fifth Street, Northwest (T-118).

Mr. Deragon got out of the car near the intersection of Fifth Street with G Street, Northwest. (T-119) Mr. Carey, who said he had been following the car, signaled police who stopped the car by blocking its path. (T-150) Police Officer Jerome Redford identified Appellant Blount as the driver of the vehicle (T-151) and Appellant Williams as a passenger (T-151-2). Police found a brown pocketbook in the back seat (T-179) with articles inside identifying its owner as Miss Douglas. Both Appellants immediately denied having taken the pocketbook. (T-182) They were arrested and charged with robbery.

ARGUMENT

No attempt was made by the government to identify either Appellant Blount or Appellant Williams as one of the individuals who actually took the purse from the victim. No effort was made by the government to show that Appellants had prior knowledge of the offense. The evidence undeniably shows that if Appellants were near the scene at all, they were inside the automobile during the time of the pursesnatching. To be liable as principals, then, the Appellants must be liable under Title 22, Section 105 of the District of Columbia Code (T-188), which reads:

In prosecutions for any criminal offense all persons advising, inciting or conspiring at the offense, or aiding or abetting the principal offender, shall be charged as principals and not as accessories, the intent of this section being that as to all accessories before the fact the law heretofore applicable in cases of misdemeanor only shall apply to all crimes, whatever the punishment may be.

Yet no evidence was introduced in link either of Appellants with the robbery, or to show guilty knowledge on their parts. There are two clearly distinguishable elements of the incident described at trial. One is the snatching of the purse by one or more of several young persons and the latters' hasty retreat down the street. The second is the entry--from all the evidence, uninvited entry--of two of these young individuals into the back seat of a car driven by Appellant Blount and occupied by Appellant Williams. The record

is devoid of evidence connecting the second element with the first.

"A sine qua non of aiding and abetting is guilty participation."

(Bailey v. United States (1969) 135 U.S. App. D.C. 95, 98, 416 F2d 1110)

To be convicted of aiding and abetting, Appellants must be shown by the government to have had guilty knowledge. (Kemp v. United States (1962) 114 U.S. App. D.C. 88, 311 F2d 774) This is especially true of Appellant Williams who, according to the testimony, was only a passenger in the car. (Kemp, *ibid*, at 89) That Appellant Blount performed the act of driving the car, and Appellant Williams supported the door with his hand while the allegedly guilty parties entered, is not of itself indicative of guilt of their parts. Such acts standing alone do not identify them with guilty use of knowledge. (Kemp, *ibid*) In the Kemp case the Court held that the mere showing that defendant "rode in the car, pushed it, repaired a punctured tire, etc.", did not of itself prove defendant's guilt.

An inference of criminal participation cannot be drawn merely from presence; a culpable purpose is essential. (Bailey, *ibid*, at 98; Hicks v. United States (1893) 150 U.S. 442.

There is not a "scintilla of evidence" in the record that Appellant Blount or Williams knew anything was stolen. According to the testimony of Mr. Deragon concerning the location of Appellants' car, Appellants could not have seen the pursesnatching. (T-107-8) Mr. Carey testified that the car was moving across the intersection at the time of the incident. (T-116) Furthermore,

there is no evidence that either of Appellants saw the purse later or knew it was in the car. (United States v. Carengella (1952, 7th Circuit) 198 F2d 3, 7, cert. den. 344 U.S. 831) Police testified that they found the purse in the back seat (T-179), and that both Appellants were in the front seat (T-151-2).

Guilt, according to a basic principle of our jurisprudence, must be established beyond a reasonable doubt. And, unless that result is possible on the evidence, the judge must not let the jury act; he must not let it act on what would necessarily be only surmise and conjecture, without evidence. (Cooper v. United States (1954) 94 U.S. App. D.C. 343, 346, 213 F2d 39, 42, note 11; Bailey, *ibid*, at 98)

Appellant in the Bailey case had been seen before the robbery shooting crap with a man who later robbed the victim. When the victim appeared carrying money in a bag, the robber left the crap game and took the money at gunpoint. Appellant stood ten feet away, saying and doing nothing. When he had the money, the robber and Appellant took off in the same direction and ran together for three or four blocks until their pursuer lost them. The Court of Appeals, in an opinion delivered by Circuit Judge Spottswood W. Robinson, III, held that the evidence was legally insufficient to convict Appellant.

(T)his case is devoid of evidence beyond what the previous associative acts and the subsequent flight might themselves reflect, that appellant's presence on the scene was designed to in any way sanction or promote the robbery. (135 U.S. App. D.C., at 99)

The same argument is made in the case at bar. Appellants' car was stopped at the side of the street around the corner from where the incident took place. Two youths who supposedly snatched a lady's purse got into the car. Mr. Deragon, who had been chasing those youths, got into the car after them. The car was driven away and Appellants were apprehended by police summoned by Mr. Deragon's friend. There is no evidence of any acts by either Appellant which "in any way sanction or promote the robbery".

The evidence plainly is insufficient for conviction and the judge below erred in denying the motions of counsel for both Appellants for judgment of acquittal. In passing on such a motion, the trial judge "must determine whether upon the evidence, giving full play to the right of the jury to determine credibility, weigh the evidence and draw justifiable inferences of fact, a reasonable mind might fairly conclude guilt beyond a reasonable doubt."

(Curley v. United States (1947) 81 U.S. App. D.C. 389, 392, 160 F2d 229, 232, cert den 331 U.S. 837; Bailey, *ibid*, at 97)

The government offered against Appellants evidence which was wholly circumstantial and at least as consistent with innocence as with guilt. "(P)roof of circumstances which, while consistent with guilt, are not inconsistent with innocence, will not support a conviction." (Cox v. United States (8th Circuit) 96 F2d 41, 43; Johnson v. United States (1952, 8th Circuit) 195 F2d 673, 676; Wesson v. United States (8th Circuit) 172 F2d 931, 933; Vick v. United States (1954, 5th Circuit) 216 F2d 228, 232) The government could do no more than create a suspicion of guilt on the part of

Appellants, and suspicion--even "grave" or "strong" suspicion-- is not enough. (Scott v. United States (1956) 98 U.S. App. D.C. 105, 232 F2d 363, 364; Jones v. Commonwealth (1967) 208 Va. 370, 157 S.E.2d 907, 910)

ADDITIONAL ARGUMENT FOR APPELLANT WILLIAMS

All reasoning and argument regarding the lack of evidence implicating Appellant Blount applies with greater force to Appellant Williams. He was but a passenger in the car. The situation of Appellant Williams is similar to that of the appellant in the aforementioned Bailey case. There appellant had prior association with the actual robber, and ran away from the scene at his side. Here, Appellant Williams was sitting in a car with a man accused of aiding and abetting a robbery. When that man rode away, Appellant Williams was taken along with him.

CONCLUSION

Since the evidence was not sufficient to conclude that Appellant Blount was guilty beyond a reasonable doubt, the trial judge was in error in denying Appellant Blount's Motion for Judgment of Acquittal and his conviction should be reversed.

A fortiori, the evidence was insufficient against Appellant Williams, whose situation is squarely within the Bailey ruling, and his conviction should be reversed.

Respectfully submitted,
EVANS & GRANT

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Attorney for Appellants
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BRIEF FOR APPELLEE

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,882

UNITED STATES OF AMERICA, APPELLEE

v.

MICHAEL BLOUNT, APPELLANT

No. 24,883

UNITED STATES OF AMERICA, APPELLEE

v.

ODELL WILLIAMS, APPELLANT

Appeals from the United States District Court
for the District of Columbia

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Cr. No. 766-70

United States Court of Appeals

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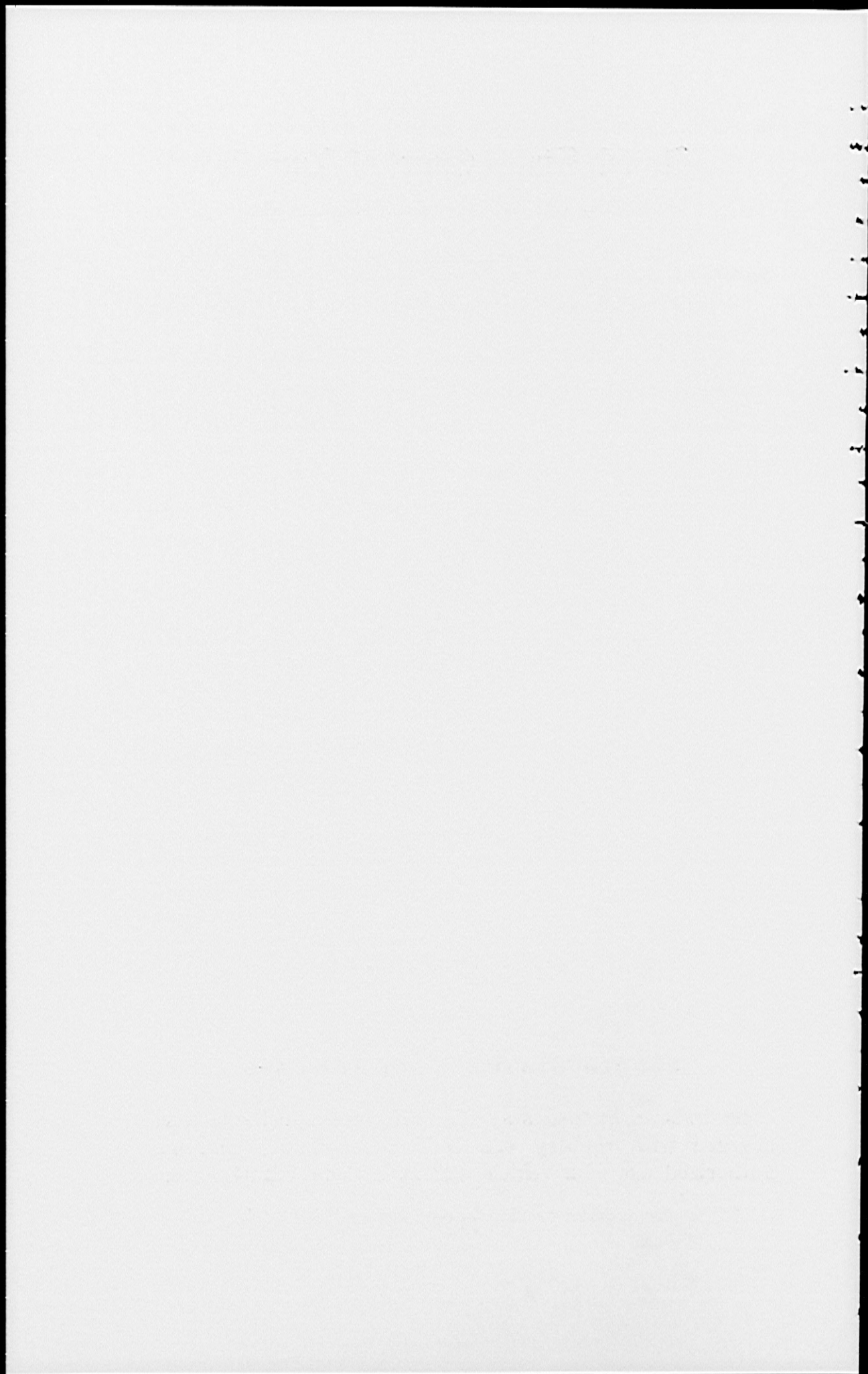
* Cases chiefly relied upon are marked by asterisks.

ISSUE PRESENTED *

In the opinion of appellee, the following issue is presented:

Was there sufficient evidence to support the jury's verdict that appellants were guilty beyond a reasonable doubt of robbery?

* This case has not previously been before this Court.



United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,882

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No. 24,883

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ODELL WILLIAMS, APPELLANT

Appeals from the United States District Court
for the District of Columbia

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

By indictment filed May 12, 1970, both appellants were charged with robbery (22 D.C. Code § 2901) and unauthorized use of a vehicle (22 D.C. Code § 2204). Ap-

pellants' motion to sever the counts was granted on July 7, 1970. Trial on the robbery count was held on July 15 and 16 before the Honorable Barrington D. Parker, sitting with a jury, and both appellants were found guilty of robbery. The Government's motion to dismiss the second count of the indictment was granted as to both appellants on October 19. On October 28, 1970, appellant Blount was sentenced to imprisonment for eighteen months to six years, and appellant Williams was sentenced to imprisonment for two to six years. These appeals followed.¹

On February 28, 1970, at about 2:00 p.m., Miss Elma K. Douglas was walking south on the west side of North Capitol Street between F and E Streets, N.W. (Tr. 5-6, 11). As Miss Douglas approached the corner of North Capitol and E Streets, she heard the sound of people running up behind her (Tr. 3, 12, 18). Shortly thereafter she felt an arm around her neck, and she was thrown to the pavement (Tr. 3-4, 19, 29, 33). This incident took place some twenty feet from the intersection (Tr. 33). As Miss Douglas got up off the pavement, she discovered that her purse had been taken from her left arm (Tr. 4, 19).

At trial Miss Douglas identified Government's exhibit 1 as the purse with a broken strap that had been taken from her arm, and Government's Exhibits 1-B and 1-C as items that were in the purse when it was taken (Tr. 5, 6). She was unable to identify either appellant (Tr. 12, 20).

At approximately the same moment a Mustang driven by Harry L. Carey, in which William Deragon was a passenger, was proceeding south on North Capitol Street between F and E Streets (Tr. 27, 111-112, 126-127). The traffic signal at North Capitol and E Streets turned red as Mr. Carey was about fifty to seventy-five feet from the intersection (Tr. 126). Mr. Deragon, who was seated on the passenger's side of Mr. Carey's car, observed a group

¹ The two appeals were consolidated by this Court on April 13, 1971.

of youths break from a walk into a run as they proceeded south on the west side of North Capitol Street (Tr. 27-28). Mr. Deragon turned around and observed Miss Douglas standing about six or seven feet behind him on the sidewalk. He also saw several of the youths grab her (Tr. 29, 34, 46). Mr. Deragon asked Mr. Carey to stop the car, and as Mr. Deragon opened the car door, the youths ran from Miss Douglas and proceeded towards the intersection of North Capitol and E Streets (Tr. 29, 114).

While letting Mr. Deragon out of the car, Mr. Carey observed a 1960 green Rambler station wagon proceeding west on E Street through the intersection on the green light (Tr. 116, 123, 130, 132). Mr. Carey estimated that the flow of traffic on E Street was proceeding at twenty to twenty-five miles per hour while the Rambler station wagon was traveling at about ten to fifteen miles per hour (Tr. 116, 123, 133). As the station wagon proceeded through the intersection, it slowed to a stop in the right hand traffic lane "about ten or fifteen feet from the intersection" (Tr. 70, 73-74, 116-117). The rear of the station wagon was located in the crosswalk or in the area of the crosswalk (Tr. 118, 124, 134).

Mr. Deragon pursued two or three youths whom he had seen next to Miss Douglas southward along the sidewalk of North Capitol Street towards the intersection at E Street (Tr. 29-30, 112). When two of the youths reached the corner, Mr. Deragon was not more than five feet behind them (Tr. 31). At this point Mr. Deragon observed the green Rambler station wagon parked about twenty to twenty-five feet from the two youths with two persons in the front seat (Tr. 36, 70, 73, 117). The person on the passenger's side reached over the seat with his right arm and held the right rear door open (Tr. 35-36). As he approached the Rambler, Mr. Deragon observed an object hanging by the side of one of the youths outside the station wagon (Tr. 96). By the time Mr. Deragon got to the station wagon, one of the youths was already in the back seat, and the second was attempting to enter the back seat (Tr. 37). Mr. Deragon tried to pull him away

from the car, but the one already inside, along with the passenger in the front seat, finally succeeded in pulling the second youth into the car (Tr. 38). The passenger in the front seat tried to push Mr. Deragon away (Tr. 39). Mr. Deragon lost his footing and was either pulled or fell into the back seat (Tr. 39, 93, 115). Mr. Carey saw a third youth standing in the street next to the Rambler. This person had been with the two that were in the back seat of the Rambler, but the third youth was not able to get into the car (Tr. 115-116, 135).

At this point the Rambler "pulled out fast" and proceeded west on E Street, as Mr. Deragon lay across the back seat with his legs protruding from the right rear door (Tr. 39-40, 71, 135-136). Mr. Carey proceeded through the red light at North Capitol and E Streets in order to pursue the Rambler (Tr. 118), which was "going faster than the speed limit" and went through at least one red light (Tr. 143). Mr. Carey estimated that his car was seventy-five to one hundred feet behind the Rambler while pursuing it (Tr. 121, 144). Mr. Deragon attempted to keep the right rear door of the Rambler open with his right foot (Tr. 94). Others in the car tried to pull his leg in and get the door closed, and at one point the person on the passenger's side of the front seat told him, "Get that damn leg in or I'll cut it off." (Tr. 40, 94.) The Rambler soon turned off E Street and proceeded north on 5th Street, N.W. As the car approached the intersection of 5th and G Street, it slowed down, and Mr. Deragon opened the left rear door of the car and attempted to exit.

The two persons in the rear of the car assisted Mr. Deragon by pushing him out the left rear door (Tr. 41, 138, 149, 167). Mr. Deragon ran back to Mr. Carey's car and waved his hands in the air in an attempt to draw the attention of two police officers in a passing patrol wagon (Tr. 41, 149, 167, 175). Officers Redford and Henderson, who were in the patrol wagon, saw the two vehicles at the intersection and also observed the scuffle in the back seat between Mr. Deragon and one of the oc-

cupants of the Rambler (Tr. 173, 175). Officer Redford pulled the patrol wagon diagonally into the northbound lane of 5th Street and blocked the Rambler's path (Tr. 149, 169, 176). Both officers approached the Rambler and directed the four occupants to get out, and all did so. At this point Officer Henderson looked into the back seat of the car and observed a brown pocketbook with a broken strap under the rear seat (Tr. 171, 179). The four occupants of the car were placed under arrest.

At trial the officers identified appellant Blount as the driver of the Rambler and appellant Williams as the person sitting on the passenger's side of the front seat (Tr. 151-152, 177-178). The two occupants of the back seat, other than Mr. Deragon, were identified as Walter Wilson and James Williams.² (Tr. 185). The officers also identified Government's Exhibit 1 as the purse with a broken strap that was recovered from the Rambler (Tr. 171, 179). Officer Henderson further identified Government's Exhibits 1-B and 1-C as items contained within the purse when it was recovered (Tr. 180-181).

ARGUMENT

There was sufficient evidence for a jury to conclude beyond a reasonable doubt that appellants were guilty of robbery.

(Tr. 35, 38-40, 94, 123-124, 143)

Appellants contend that the evidence was insufficient to sustain the convictions. However, the record reveals that the evidence, when viewed in the light most favorable to the Government, certainly permitted a reasonable man fairly to conclude guilt beyond a reasonable doubt, particularly when given the benefit of all legitimate inferences to be drawn. *Crawford v. United States*, 126 U.S. App.D.C. 156, 375 F.2d 332 (1967); *Curley v. United*

² The Court ascertained out of the presence of the jury that both Walter Wilson and James Williams were juveniles (Tr. 152-157, 161, 185).

States, 81 U.S. App. D.C. 389, 160 F.2d 229, *cert. denied*, 331 U.S. 837 (1947). The fact that the Government relied on the theory that the appellants aided and abetted the principals is not significant here, since one who aids and abets in the perpetration of a crime is chargeable as a principal. 22 D.C. Code § 105.

The criteria for establishing aiding and abetting are (1) that an offense was committed by someone, (2) that the accused participated or assisted in the crime, and (3) that the accused had guilty knowledge of the crime. *United States v. Harris*, — U.S. App. D.C. —, 435 F.2d 74 (1970). In an aiding and abetting case, the Government must show that the accused associated himself with the criminal venture and that he sought by his action to make the venture succeed. *Nye & Nissen v. United States*, 336 U.S. 613 (1949); *Long v. United States*, 124 U.S. App. D.C. 14, 360 F.2d 829 (1966); see *Bailey v. United States*, 135 U.S. App. D.C. 95, 416 F.2d 1110 (1969).

Appellants contend that they did not have guilty knowledge, i.e., that they were unaware that a crime was committed. They also argue that there was no evidence introduced to link either of them with the robbery. Certainly knowledge, like specific intent, "is incapable of direct proof and is established, if at all, by circumstantial evidence." *United States v. Harris, supra*, — U.S. App. D.C. at —, 435 F.2d at 74, citing *Anderson v. United States*, 406 F.2d 529, 532 (8th Cir. 1969). The law, of course, makes no distinction between direct and circumstantial evidence, nor is there a greater degree of certainty required of circumstantial evidence than of direct evidence. *Holland v. United States*, 348 U.S. 121, 139-140 (1954); *Hunt v. United States*, 115 U.S. App. D.C. 1, 3, 316 F.2d 652, 654 (1963).

In the case at bar, the evidence disclosed that at approximately the same time that the robbery was taking place, appellant Blount was driving a car through the intersection at a slow speed (Tr. 123). He stopped the car in a traffic lane some twenty to thirty feet from where the robbery occurred (Tr. 124). Two of the robbers

got into the car (Tr. 38); it sped away from the scene, with one of the doors partially open (Tr. 94, 143), and went through at least one red light almost immediately thereafter (Tr. 143). Such activity is sufficient to establish the guilt of appellant Blount. See *Long v. United States*, *supra*, 124 U.S. App. D.C. at 20-21, 360 F.2d at 835-836.

As to appellant Williams, the evidence indicated that he was seated in the front seat of the car driven by Blount as it proceeded through the intersection (Tr. 35). He held the right rear car door open so that the two robbers could enter the car (Tr. 35) and tried to push Mr. Deragon away as Deragon attempted to pull one of the robbers from the car (Tr. 39). After Mr. Deragon was in the back seat, appellant Williams warned him, "Get that damn leg in or I'll cut it off" (Tr. 40). This evidence, we submit, was sufficient to permit the jury to return a verdict of guilty as to appellant Williams.

CONCLUSION

WHEREFORE, it is respectfully submitted that the judgment of the District Court should be affirmed.

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